

Federal Communications Commission

DA 02-2389

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 01-65
Table of Allotments,)	RM-10078
FM Broadcast Stations.)	RM-10188
(Emmetsburg, Sanborn and Sibley, Iowa)	RM-10189
and Brandon, South Dakota) ¹)	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: September 25, 2002

Released: September 27, 2002

By the Assistant Chief, Audio Division:

1. In response to a Petition for Rule Making filed by Eisert Enterprises, Inc. ("Eisert"), the Commission has before it for consideration the *Notice of Proposed Rule Making*² requesting the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the license for Station KEMB to reflect the higher class of channel. To accommodate the allotment of Channel 261C3 at Emmetsburg, Eisert also requested the deletion of vacant Channel 262A at Sibley, Iowa. Counterproposals were filed by Eisert and Saga Communications of Iowa, LLC ("Saga").³ Eisert and Saga filed reply comments.

2. Saga counterproposed the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota. Saga also requested the deletion of vacant Channel 262A at Sibley, Iowa, to accommodate its proposal for Brandon. Saga states that its proposal for Brandon should be preferred over Eisert's upgrade at Emmetsburg as its counterproposal will result in service to 150,519 people while Eisert's proposal would result in service to only 51,519 people. Saga further states that it or an affiliate will participate in any future auctions for Channel 261C3 at Brandon, filing all necessary applications at the appropriate time.

3. Eisert filed a counterproposal requesting the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modification of the license for Station KDWD, as was originally proposed in the *Notice*. Eisert further requested the deletion of vacant Channel 262A at Sibley, Iowa, and the allotment of Channel 264A at Sanborn, Iowa, as a first local service. Eisert has made a commitment to file an application for Channel 261C3 at Emmetsburg and Channel 264A at Sanborn. In support of this proposal, Eisert states that the C3 allotment at Emmetsburg will almost double its service and that the allotment at Sanborn will

¹ The communities of Brandon, South Dakota, and Sanborn, Iowa, have been added to the caption.

² Emmetsburg and Sibley, Iowa, 16 FCC Rcd 4932 (MM 2001).

³ The counterproposals filed by Eisert (RM-10189) and Saga (RM-10188) were put on public notice on July 24, 2001, Report No. 2497.

provide a first local service to an incorporated community of 1,345 people.

4. In reply comments, Saga continues to support the substitution of Channel 261C3 for vacant Channel 261A at Brandon, South Dakota. Saga also supports Eisert's proposal to allot Channel 264A at Sanborn, Idaho, but not the proposed upgrade at Emmetsburg. According to Saga, the allotment of Channel 261C3 at Emmetsburg and Channel 264A at Sanborn will provide service to 76,542 people while the allotment of Channel 261C3 at Brandon and Channel 264A at Sanborn will provide service to 175,923 people, over twice the population of Eisert's proposal. Saga contends that the allotment of Channel 261C3 at Brandon and Channel 264A at Sanborn should be preferred over the upgrade at Emmetsburg and allotment of Channel 264A at Sanborn because of service to a larger population. Eisert, in reply comments, contends that its proposal will serve more new listeners than Saga's. Eisert states that the upgrade of Station KDWD from a Class A to a Class C3 station would provide new 60 dBu service to 28,607 people while upgrading vacant Channel 261A at Brandon to a Class C3 channel could theoretically provide new 60 dBu service to 26,223 people. Eisert argues that this difference is "determinative."⁴ Eisert also argues that the Class A service, as well as the additional population served with upgraded facilities at Brandon, is theoretical since the Commission must first include the channel in an auction proceeding. In this situation, since the actual transmitter site is unknown, Eisert contends the number of people that Saga states will be served by the C3 facility at Brandon is speculative. By contrast, Eisert points out that Station KDWD, Emmetsburg, will serve an additional 28,607 people by upgrading from a Class A to Class C3 as the station is on the air and will remain at its current tower site.

DISCUSSION

5. Conflicting proposals, such as have been filed in this proceeding, are generally considered under the guidelines set forth in *Revision of FM Assignment and Policies and Procedures*.⁵ We find that the proposals for Emmetsburg and Brandon trigger priority 4), other public interest matters. A staff analysis shows that Channel 261C3 can be allotted to Emmetsburg, Iowa, or Brandon, South Dakota, but both upgrades cannot be granted in compliance with the Commission's spacing requirements. We conducted our own engineering and population analyses to determine which proposal could provide additional service to the larger population within the gain area of the predicted C3 contour at Emmetsburg as well as Brandon. After considering the results of our analyses, we have determined that the Emmetsburg proposal should be adopted. Under our precedent, mutually exclusive upgrade proposals are generally compared under priority (4) on the net gain of population in their 1mV/m service contour.⁶ Based on a comparison of the population within the predicted gain areas, we believe the Emmetsburg proposal will provide a new service to the greater number of people. A comparison of the population totals within the gain areas indicates that

⁴ Eisert cites *Benton and Dardanelle, Louisiana*, 3 FCC Rcd 4840 (MM 1988) and *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982), *Galesburg, Illinois and Ottumwa, Iowa*, MM Docket No. 97-130, 13 FCC Rcd 20211 (MM 1998).

⁵ 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

⁶ See *Greenup, KY and Anthens, OH*, 6 FCC Rcd 1493, 1495 (1991).

adoption of the Emmetsburg proposal would result in a net gain of service to 29,029 people whereas the Brandon proposal would result in service to an additional 24,614 people. Therefore, the counterproposal filed by Saga to upgrade vacant Channel 261A at Brandon, South Dakota, to Channel 261C3, will be denied. In accordance with Section 1.420(g) of the Commission's Rules, we are herein modifying the license for Station KEMB, Emmetsburg, Iowa, to specify operation on Channel 261C3 in lieu of Channel 261A at coordinates 43-07-24 and 94-51-29. To accommodate the upgrade at Emmetsburg, we shall also delete vacant Channel 262A at Sibley, Iowa. No comments were received supporting retention of Channel 262A at Sibley, Iowa.

6. In response to the counterproposal filed by Eisert, we shall allot Channel 264A to Sanborn, Iowa, as a first local service. Channel 264A can be allotted to Sanborn without a site restriction in compliance with the Commission's spacing requirements at coordinates 43-10-53 and 95-39-23. A staff engineering analysis has determined that the 60 dBu contour for Channel 264A at Sanborn could provide a new service to 25,037 people in an area of approximately 2,516 square kilometers. Sanborn is an incorporated community with a population of 1,345 people and is located in O'Brien County. Sanborn has its own local government, City Hall, municipal utilities, schools, churches, civic organizations, its own volunteer fire department and numerous retail and wholesale businesses serving the community.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective November 12, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Communities	Channel Number
Emmetsburg, Iowa	261C3
Sanborn, Iowa	264A
Sibley, Iowa	----

8. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Eisert Enterprises, Inc. for Station KEMB, Emmetsburg, Iowa, IS MODIFIED to specify operation on Channel 261C3 in lieu of Channel 261A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-19980917KC except for the class of channel as specified above. Any changes, except those specified require prior authorization pursuant to an application for construction permit (FCC Form 301).

(a) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules,

PROVIDED the transmission facilities comply in all respects with License BLH-19980917KC, except the class of channel as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

9. IT IS FURTHER ORDERED, That the counterproposal filed by Saga Communications of Iowa, LLC (RM-10188) IS DENIED.

10. IT IS FURTHER ORDERED, That the Secretary of the Commission shall issue a copy of this Order by Certified Mail, Return Receipt Requested to:

Saga Communications of Iowa, LLC
c/o Gary S. Smithwick
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, N.W., Suite 301
Washington, D. C. 20016

11. A filing window for Channel 264A at Sanborn, Iowa, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

12. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Eisert Enterprises, Inc., licensee of Station KEMB, is required to submit a rule making fee in addition to the fee required for the application to effect the substitution of Channel 261C3 for Channel 261A at Emmetsburg, Iowa.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Kathleen Scheuerle, Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 261C3, Emmetsburg, Iowa, should be addressed to the Audio Division, Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau